

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN PAUL FERNSEMER,

Defendant-Appellant.

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UNPUBLISHED

May 3, 2005

No. 250770

Grand Traverse Circuit Court

LC No. 03-009119-FH

Before: Saad, P.J., and Smolenski and Cooper, JJ.

COOPER, J. (*concurring*).

I agree with the majority's ultimate determination to affirm defendant's conviction and sentence. I write separately, as I would find that the testimony of Cindra Moore was inadmissible under MRE 404(b). Defendant's previous uncharged conduct toward Ms. Moore was too dissimilar to be relevant and, therefore, was inadmissible to establish a common scheme, plan, or system. However, in light of the overwhelming evidence of defendant's guilt, I would not find that the erroneous admission requires reversal. Accordingly, I concur in the result reached by the majority.

/s/ Jessica R. Cooper